

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Tina Harding

Date Application filed with the Town Clerk: April 28, 2005

Nature of request: A Special Permit under Sections 3.352.1 and 5.041 of the Zoning Bylaw to modify Special Permit ZBA FY96-0025 to continue to operate Bart's Homemade under new ownership

Property Location 103 North Pleasant Street (Map 14A, Parcel 44, B-G Zone)

Legal notice: Published on May 11th and 18th, 2005 in the Daily Hampshire Gazette and sent to abutters on May 12, 2005

Board members: Zina Tillona, Ted Rising, Joan Golowich

Submissions: The applicant submitted with the application:

- A floor plan for both the indoor and outdoor areas
- A management plan listing hours of operation, number of employees, trash and recycling management, sign, and deliveries information
- A sample menu

The Assistant Fire Chief submitted a review stating that access is adequate for fire and ambulance service, dated May 19, 2005

Site Visit: May 24, 2005

The Board observed that the shop's layout was identical to what has existed for many years – booths and tables inside for customers, and tables and chairs outside within a small fenced area. The patio is accessed via the shop interior only. Bart's is adjacent to a Unitarian Meetinghouse and the Boltwood Walk, where young people congregate and street vendors sell a variety of goods. The immediate area also has a variety of businesses – a Chinese restaurant, coffee shop, hair salon, and a funeral parlor.

Public Hearing: May 26, 2005

Tina Harding, the current owner of Bart's Ice Cream, represented herself at the hearing. She said that she recently purchased the business and found that the previous ZBA Special Permit had a condition of expiration upon change of ownership. She was given a temporary permit to operate by the Building Commissioner, but with restricted hours until she is granted a new Special Permit from the Board.

Ms. Harding said that she had managed the Northampton Bart's before it had been sold, so she is familiar with the business and operating an ice cream/sandwich shop.

Ms. Harding stated that she plans to continue Bart's operation in the same manner as did the former owner. That is,

- The ice cream will remain rich and creamy, with all of Bart's famous chocolate flavors
- The menu for sandwiches, salads, soups, sweets and drinks will remain the same
- Some cooking is done on the premises, but the kitchen is too small for extensive baking, etc, so some food is prepared off-site.
- The floor plan and seating will remain in the same configuration
- Seating capacity inside currently is 55; outdoor seating is 16. The permitted total capacity is 75
- The operating conditions will be the same as that for the previous Special Permits.

The Board reviewed the management plan with the petitioner. The hours of operation as stated in the management plan are those Ms. Harding will maintain on a regular basis, but she did say that in the future she may like to remain open until 1 AM on weekends. Ms. Harding said that there is a regular breakfast clientele, so she will continue to open at 7:45 AM Monday through Friday.

An inquiry was made concerning the storage of outdoor furniture in the off season. Ms. Harding said that she didn't know what was done in the past, but that she would definitely store them after the late summer season. Section 5.0410 of the Zoning Bylaw requires that the tables and chairs be removed from November 1 to April 1.

The Board inquired about young people frequenting the store and becoming a nuisance, since there had been a history of that in the past. Ms. Harding said that there is a noticeable increase of customers after school hours, but there have been no problems for her to date.

Ted Rising made a motion to close the public hearing. Joan Golowich seconded the motion, and the vote was unanimous.

Public Meeting:

The Board noted that this has been a popular business in Amherst for over 20 years. It has changed ownership twice during that time, but the management has continued to be of a high level. Given that Ms. Harding has worked in the business before, there is no indication that the situation will change under her management.

The Board discussed the possible conditions to the permit, and concluded that the conditions of the previous Special Permit FY96-0025 should remain intact.

Findings:

The location of a Class II restaurant in the General Business District, with hours of operation after 11:30 p.m. and outdoor dining in a restricted area, is allowed by Special Permit if the appropriate findings under Section 10.38 of the Bylaw are met.

The Board finds under Section 10.38, Specific Findings for all Special Permits, that:

10.380 – The proposal is suitably located in the neighborhood, since both the ice cream parlor and outdoor seating on the corner of the Boltwood Walk and North Pleasant Street have been successfully tested for a number of years.

10.381 & 10.383 – The proposal is compatible with existing uses since the business is located in a B-G zone with several other businesses and is separated from the Unitarian Meetinghouse by the large open space of the Boltwood Walk.

10.384, 10.387 & 10.388 – Appropriate facilities are provided for the proper operation of the facility since: 1) the business has been operating for some time, 2) the outdoor dining is fenced off and accessed only from within the store, and 3) provisions for off-street unloading of supplies on both the north and west side of the building have been made. There is no hazard to abutters or pedestrians

10.389 – The proposal provides adequate methods of disposal of refuse and recyclables since there are trash receptacles within the restaurant and in the fenced outdoor area, there is a common dumpster on the east side of the building, and refuse will be emptied several times a day.

10.398 – The proposal is in harmony with the general intent of the Bylaw in that it provides a popular product in a safe and congenial atmosphere to its patrons, young or old.

Zoning Board Decision: Joan Golowich moved to APPROVE the Special Permit, with conditions. Zina Tillona seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit to Tina Harding to continue to operate Bart's Homemade under new ownership as a modification of Special Permit ZBA FY96-0025, under Sections 3.352.1 and 5.041 of the Zoning Bylaw, on the premises at 103 North Pleasant Street (Map 14A, Parcel 44, B-G Zone), with conditions.

ZINA TILLONA

TED RISING

JOAN GOLOWICH

FILED THIS _____ day of _____, 2005 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2005.
NOTICE OF DECISION mailed this _____ day of _____, 2005
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2005,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Tina Harding to continue to operate Bart's Homemade under new ownership as a modification of Special Permit ZBA FY96-0025, under Sections 3.352.1 and 5.041 of the Zoning Bylaw, on the premises at 103 North Pleasant Street (Map 14A, Parcel 44, B-G Zone), subject to the following conditions:

1. Total seating inside and outside is limited to no more than 75 persons.
2. Total outdoor seating shall be limited to 18.
3. Business hours shall be from 7 AM to 1 AM.
4. The number of employees on the premises at any one time shall be limited to six (6), including the manager.
5. The menu shall be limited to ice cream, bagels, pastries, luncheon items such as soups, salads and sandwiches, and non-alcoholic beverages.
6. Cooking facilities shall be limited to those required for the preparation of the foods listed above. There shall be no deep-fat frying equipment
7. Several refuse containers shall be appropriately placed for both inside and outside diners as shown on the floor plan submitted by the applicant on April 28, 2005 approved by the Board on May 26, 2005 and on file in the zoning office. All trash shall be emptied several times daily and deposited into the dumpster located on the east side of the building.
8. Recycling containers shall be available for bottles and cans.
9. Any new signs or changes to existing signs shall be approved by the ZBA at a business meeting.
10. The business shall be conducted as detailed on the management plan submitted by the applicant on April 28, 2005 and approved by the Board on May 26, 2005 and on file in the zoning office.
11. Outdoor furniture shall be removed and stored off-site between the dates of November 1 and April 1.
12. Any change in ownership shall trigger a review of the new management's plan for the business operation at a business meeting of the Board.

ZINA TILLONA, Chair
Amherst Zoning Board of Appeals

DATE

